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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219077
Party	Defendant Telebrands Corp.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Tristar Products, Inc.)	
)	Opposition No. 91219077
)	
Opposer,)	Application Serial No.
)	86/232781
v.)	
)	
Telebrands Corp.)	
)	
Applicant.)	
)	

**APPLICANT TELEBRANDS CORP.’S MEMORANDUM IN OPPOSITION
TO OPPOSER TRISTAR PRODUCTS, INC.’S
MOTION FOR AN ORDER TO COMPEL DISCOVERY**

Applicant Telebrands Corp. (“Applicant”) hereby submits the following memorandum of law in opposition to Opposer Tristar Products, Inc.’s (“Opposer”) motion for an order to compel answers to Opposer’s First Set of Interrogatories to Applicant (“Interrogatories”) and to produce documents in response to Opposer’s First Request to Applicant for the Production of Documents and Things (“Request for Production”).

I. FACTUAL BACKGROUND

On April 20, 2015, Opposer served Applicant its first set of Interrogatories and first Request for Production. Applicant timely responded on May 26, 2015. (Dkt. No. 15, Exhs. A & B.) Over two months later, on August 6, 2015, Applicant received a letter from Opposer explicitly stating “[i]n order to accommodate your objection that certain information is confidential, we are agreeable to entering into a Stipulated Protective Order. Please confirm that you will agree to enter into a Protective Order . . . If we do not hear from you by August 21, 2015, we will file a Motion to Compel” (emphasis in original) (*Id.* at Exh. C.) In response to Opposer’s letter, on

August 21, 2015, Applicant responded to Opposer's counsel via email, confirming, as requested, that Applicant will agree to enter into a Stipulated Protective Order, and requesting that Opposer provide a draft protective order at its earliest convenience. (*Id.* at Exh. D.) No response was received from Applicant. Instead, one month later, Opposer filed this motion for an order to compel.

On June 9, 2015, Applicant served discovery requests on Opposer, which responded on July 14, 2015. To date, Opposer has not produced a single document.

II. ARGUMENT

A. Applicant's Motion To Compel Should Be Denied Because Applicant Failed To Provide Opposer With The Requested Draft Stipulated Protective Order

Opposer's arguments regarding Applicant's production of confidential documents pursuant to the Board's standard protective order are unfounded given the parties' agreement to enter into their own stipulated protective order. (Dkt. 15, Exhs. C & D.) Opposer improperly attempts to shift the burden of providing a draft protective order to Applicant. It is well-settled litigation practice for the plaintiff—the party bringing the action, i.e., Opposer, to provide drafts of such discovery-related documents. Applicant requested a draft stipulated protective order from Opposer, and Opposer did not respond to Applicant's request. (*Id.*) Opposer cannot now complain that it does not have the requested documents when it was explicitly given the opportunity take action, but instead was unresponsive. In any event, Applicant will send Opposer a draft Protective Order for review.

B. Applicant Sufficiently Responded To Opposer's Interrogatories

Opposer incorrectly contends that Applicant's responses to Interrogatory Nos. 1-4, 13, 16, 18, and 24 are incomplete and its objections lack merit. (*Id.* at p. 2.) Fed.R.Civ.P. 33(b) requires that "each interrogatory must, to the extent it is not objected to, be answered separately and fully in

writing.” For the reasons set forth below, Applicant’s responses to each interrogatory were responsive in accordance with the Fed.R.Civ.P. 33(b). Many of Opposer’s Interrogatories and Document Requests seek information more appropriately obtained by deposition, rather than by vague, overbroad and confusing Interrogatories and Document Requests.

With respect to Interrogatory No. 1, Opposer contends that Applicant’s response is insufficient because Applicant provided the name of the individual who chose the mark COPPER HANDS (Mr. Bala Iyer), but did not describe in detail the circumstances surrounding the decision to choose COPPER HANDS over other marks. (Dkt. No. 15, pp. 2-3.) In its response, Applicant explicitly objected to Interrogatory No. 1 on the grounds, among other things, of attorney work product and attorney-client privilege. (*Id.* at Exh. A, p. 3.) Further, the Interrogatory is vague, and it is not at all clear what information Applicant is seeking. Accordingly, per the Federal Rules, Applicant fully responded to the interrogatory to the extent it did not object (*Id.*), and no more is required of Applicant.

With respect to Interrogatory Nos. 2-4, Opposer requested an identification of the results and all documents relating thereto, of each trademark search the Applicant performed or had performed for it (Interrogatory No. 2) and identification of opinions regarding likelihood of confusion and descriptiveness of Applicant’s mark (Interrogatory Nos. 3 and 4). In response, Applicant properly objected to submitting this information as privileged. *See e.g.*, TMBP § 414. Investigations conducted by counsel clearly are privileged, regardless of whether the sources searched are public databases on the Internet. Opposer’s arguments to the contrary are specious.

With respect to Interrogatory No. 13, Opposer requested that Applicant identify each website where Applicant’s goods are offered or will be offered under Applicant’s mark. Applicant objected to the extent that the interrogatory sought information that is not within Applicant’s

possession or control. Applicant did, however, identify one website, www.copperhands.com, in response to the interrogatory. Applicant does not have knowledge of every website where its goods are sold or every website that mentions its mark. Nonetheless, the information sought in this interrogatory is public information. If desired, Opposer can perform its own Google search to determine each website where Applicant's goods are sold or where its mark is mentioned. This information is not readily available to Applicant.

With respect to Interrogatory No. 16, Applicant maintains that it will produce documents in response to this interrogatory upon entry of a suitable protective order, as agreed to by the parties.

With respect to Interrogatory No. 18, Applicant maintains that Opposer's request for a description of the circumstances of each received document, correspondence, or telephone call relating to Applicant's Mark is overly broad and unduly burdensome. Applicant is a large corporation, selling multiple products. On any given day a large number of documents, correspondence and telephone calls are received. Accordingly, it would be unduly burdensome for Applicant to describe the circumstances requested by Opposer. Moreover, it is not even clear how to describe the circumstances surrounding receipt of a document.

With respect to Interrogatory No. 24, Applicant objected to the phrase "extent of such knowledge." Applicant maintains this phrase is vague. However, subject to that objection, Applicant identified Mr. Bala Iyer as having knowledge of any market research conducted by or on behalf of Applicant relating to Applicant's mark, as requested by Opposer. Accordingly, subject to the objection, Applicant sufficiently responded to Interrogatory No. 24. If Opposer has more specific question, it may question Mr. Iyer in a deposition.

In view of the foregoing, Applicant sufficiently responded to Opposer's first set of Interrogatories.

C. Applicant Sufficiently Responded To Opposer's Requests For Production

Opposer incorrectly contends that Applicant's objections to Request Nos. 9-11 and 14-16 are meritless. With respect to Request No. 9, Applicant maintains that it will produce the requested documents and things, subject to Applicant's objections, upon entry of a suitable protective order, as agreed upon by the parties.

With respect to Request No. 10, Applicant maintains its specific objections to Opposer's requests. Opposer requested "mock-ups and the like" relating to any promotional material for Applicant's Goods. Opposer does not explain how these documents and things, which are not available to the public, are relevant to Opposer's grounds for opposition or Applicant's defenses. They do not tend to prove or disprove likelihood of confusion or descriptiveness of Applicant's Mark. Additionally, Opposer requested Applicant's advertising or marketing materials. It is unduly burdensome for Applicant to produce all of these documents and things when they include publicly available information that can independently be obtained by Opposer.

With respect to Request No. 11, Applicant maintains that documents and things relating to all meetings at which Opposer or Opposer's Marks were discussed is irrelevant to Opposer's grounds for opposition. Opposer does not explain how documents and things related to Applicant's meetings where Opposer or Opposer's Mark were discussed are relevant to demonstrating the *public* is likely to be confused between Applicant's Mark and Opposer's Mark. Moreover, Opposer does not explain how documents and things related to Applicant's meetings where Opposer or Opposer's Mark were discussed are likely to show that *Applicant's Mark* is descriptive. If Opposer has specific questions about this topic, it may take a deposition.

With respect to Request No. 14, Opposer requested documents relating to Applicant's customers and marketing plans. In addition to the specific objections, Applicant objects to

production of customer related information to the extent it seeks confidential and/or proprietary business and financial information (*See* Applicant's General Objections, which were incorporated into each of Applicant's objections to the Document Requests). Applicant further maintains that its customers and marketing plans are irrelevant to Opposer's grounds for opposition. It is unclear how documents can show *types* of customers. In any event, Opposer is a competitor of Applicant, and Applicant will be unduly prejudiced by handing over its customer list. If Opposer has questions about the types of customers, those question may be asked at a deposition.

With respect to Request Nos. 15 and 16, Applicant maintains that correspondence with advertisers or potential advertisers (Request No. 15) and contracts relating to Applicant's goods (Request No. 16) are irrelevant to Opposer's grounds for opposition, as the correspondence and the contracts do not reveal whether Applicant's mark is descriptive or whether Applicant's mark is likely to cause confusion with Opposer's mark. Opposer argues that the manner in which the Applicant advertises its products, and the market in which it advertises, are relevant, but Request No. 15 is much broader and I not limited to that information, which is covered by other requests.

In view of the foregoing, Applicant sufficiently responded to Opposer's first set of Document Requests.

III. CONCLUSION

For the reasons set forth above, Opposer's motion for an order to compel discovery (Dkt. No. 15) should be denied.

Respectfully submitted,

Telebrands Corp.

Dated: October 14, 2015

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on Opposer's counsel, at the following address of record, by First Class Mail, postage prepaid, this 14th day of October 2015.

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Dated: October 14, 2015

/Elana B. Araj/_____

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